

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

PHILLIP GLEN PAYNE,

Appellant.

DOCKET NUMBER WD75666

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 26, 2013

APPEAL FROM

The Circuit Court of Clay County, Missouri
The Honorable Shane T. Alexander, Judge

JUDGES

Division Three: Mitchell, P.J., and Hardwick and Witt, JJ.

CONCURRING.

ATTORNEYS

Chris Koster, Attorney General
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Attorneys for Respondent,

Jeannette L. Igbenebor, Appellate Defender
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Attorney for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
 Respondent,)
 v.) **OPINION FILED:**
) **November 26, 2013**
 PHILLIP GLEN PAYNE,)
)
 Appellant.)

WD75666

Clay County

Before Division Three Judges: Karen King Mitchell, Presiding Judge, and Lisa White Hardwick and Gary D. Witt, Judges

Phillip Payne appeals his conviction for one count of statutory sodomy, entered pursuant to section 566.062, for which he was sentenced, following a jury trial, to twenty-five years' imprisonment. Payne argues that the trial court plainly erred in submitting the verdict director, which he alleges failed to sufficiently distinguish for the jury which of the three acts of sodomy described by the victim was at issue, thus violating Payne's right to a unanimous jury verdict. But because Payne's defense was a general denial and not an incident-specific defense, he failed to demonstrate a manifest injustice resulting from the allegedly erroneous instruction. Therefore, we affirm his conviction and sentence.

AFFIRMED.

Division Three holds:

1. In a multiple acts case, the verdict director(s) must distinguish the various acts from one another, if possible.
2. Even if the verdict director fails to sufficiently distinguish which act the jury is to unanimously agree upon, a defendant must still establish prejudice from the flawed instruction.

3. To demonstrate manifest injustice in a multiple acts case, the defendant must have mounted an incident-specific defense. Where the defense is merely a general denial and an attack on the victim's credibility, there can be no manifest injustice.
4. Here, Payne's defense was merely a general denial and not incident specific. Thus, he did not suffer a manifest injustice from the lack of specificity in the verdict director.

Opinion by: Karen King Mitchell, Presiding Judge

November 26, 2013

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